



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Caroline Kane, Esq. - Nacmias Law Firm, PLLC 592 Pacific Street, 1st Floor Brooklyn, NY 11217	Summons No: 037025838P et al. (1 Summons) DEPT OF BUILDINGS, -against- SAMUEL MARCANO Hearing Date: 03/18/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$2,500.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
037025838P	Sustained	10/11/2023	90-14 PARK LANE SOUTH Queens

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B187	28- 201.1	Sustained	\$2,500.00

Findings of Fact & Conclusions of Law

Caroline Kane appeared as the authorized representative of the named respondent and Henrietta Baidoo appeared for the Petitioner. The summons cites a violation of 28-201.1

The Petitioner submitted the underlying order and affidavit of service.

The respondent made a motion to dismiss, insofar as the Appeals Board has held in Appeal No. 2300679 DOB v. Medijo Realty LLC October 26, 2023. She provided the summons for that case. She contended that the instant summons was unclear as to whether the respondent was being charged with a failure to comply with repairs or a failure to submit the

engineer's report. The underlying order also says to remove the violation.

The Petitioner contended that the underlying order in the Medijo case was different insofar as it addressed both the need to file an engineer's report as well as to "repair and replace" the defective condition. Here, it was just to file the engineer's report

She relied on the decision in Appeal No. 2400669 DOB v. Deihi Rlty Co Inc July 25, 2024.

I find the sworn account of the issuing officer and Petitioner's other evidence to be credible, and that it establishes the charge. The respondent failed to set forth a valid legal defense. While the instant summons narrative is similar to that of the Medijo case, the underlying order is not, insofar as in Medijo there are two different remedies in the remedy section ("Submit an engineers [sic] report to ertinspections@buildings.nyc.gov." as well as "repair and replace") rather than just the one (the submission of an engineer's report in 96 hours) in the underlying order in this case.

The underlying order in this case is substantially the same as the one in Deihi Realty case, the most recent in this line of cases, where it was held that "On this record, the Board finds that the summons provided adequate notice of the charge. Per § 6-08(c) of Title 48 of the Rules of the City of New York, a summons must contain "[a] clear and concise statement sufficient to inform the Respondent with reasonable certainty and clarity of the essential facts alleged to constitute the violation or the violations charged[.]" Here, the IO first alleged in the summons that Respondent failed to comply with the Commissioner's order contained in the DOB violation, dated July 27, 2023. Then the IO alleged that Respondent was required to submit an engineer's report concerning structurally deficient conditions, followed by the assertion, "As of 10/11/2023, an engineer's report has not been submitted to the Department." The top of the DOB violation states, "You are hereby notified that there exists a violation in the subject premises as described below, and are ordered to remove this violation immediately. (If this violation is not corrected as required by law, you may be subject to criminal prosecution.) All inquiries and references to this violation should be directed to the respective borough." Beneath this directive, a signature is entered on a signature line with the wording beneath it, "By Order of the Buildings Commissioner." Below this, Code § 28-301.1 is cited as the section of law, and the violating condition is described as, "Building in a state of disrepair and deteriorated with spalling concrete throughout, multiple vertical and horizontal cracks and missing masonry coping stone at roof level." In the section captioned "Remedy/Requirements," it states, "Provide a Professional Engineer's report with[in] 10 business days. Submit report to ERTinspections@buildings.nyc.gov[.]" In determining whether there has been lack of adequate notice, the Board considers whether there has been prejudice or confusion caused to the respondent. See DOB v. Beach Avenue Realty, LLC, Appeal No. 2201621 (April 27, 2023). Here, it was undisputed that as of the date of violation, Respondent had neither submitted an engineer's report nor corrected the conditions described in the DOB violation. The facts are distinguishable from those in Salvatore Lopresti, 2300576. In that case, the respondent had submitted an engineer's report, corrected the DOB violation, and obtained DOB's sign-off on the correction before issuance of the summons charging Code § 28-201.1. The respondent thus demonstrated confusion over whether the Commissioner's order contained in the DOB violation directed it to submit an engineer's report within 48 hours."

In the instant summons, the underlying order has the same form language "You are hereby notified that there exists a violation in the subject premises as described below, and are ordered to remove this violation immediately. (If this violation is not corrected as required by law, you may be subject to criminal prosecution.) All inquiries and references to this violation should be directed to the respective borough." It similarly states there is a violation of A.C. 28-301.1, followed by a description of the violating condition. In the remedy box, it similarly states that the respondent is to "submit engineer's report evaluating cited conditions ERTinspections@buildings.nyc.gov within 96 hours. Unlike in the Lopresti case, but similar to the Deihi case, here, there was no confusion insofar as there never was an engineer's report nor was there correction, whether within 96 hours, or otherwise.

For all the foregoing reasons, the summons is sustained.



03/19/2025

03/19/2025

Amy Baranoff, Hearing Officer

Date